IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1351 OF 2006

Mr. Chandrakant Kashinath Surve ... Petitioner
vs.
M/s. Gold Mohur Mills (UC) NTC Ltd. And ors. ... Respondents

Mr. Vinod Shetty for petitioner
Mr. Amol Desai i/b. A.K. Jalisatgi for respondent no.1.

CORAM :- D. G. KARNIK **J.**
DATE :- 17/7/2006

P.C.:-

1. This petition is directed against the judgment and order dated 13th February 2006 passed by the Industrial Court, Mumbai, in appeal confirming the judgment and order of the Labour Court rejecting the application of the petitioner for reinstatement in service.

2. The petitioner was employed in Gold Mohur Textile Mills Ltd. , the respondent no. 1 herein. The workers in the Textile Mills in Mumbai went on strike with effect from 18th January 1982. The petitioner also was on strike. After restarting of the mill the petitioner did not join the service but on 10th January 1997, after nearly 15 years, he sent a notice to the respondent no.1 requesting for employment. As the management did not employ him he filed an application under the Bombay Industrial

Relations Act, (fort short BIR Act) which was dismissed by the Labour Court by an order dated 7th March 2003. The appeal before the Industrial Court was also dismissed on 13th April 2006. That decision is impugned in this petition.

3. Learned Counsel for the petitioner submitted that the petitioner was not on strike but he was prevented by other workers from going to work. He attempted to stay in Mumbai for some time but could not stay there for long because of financial difficulties. Finally in 1986 he left the city and thereafter sent a notice in the year 1997 .

4. The respondent no.1 denied all the contentions and submitted that the petitioner had abandoned the services. Apart from publishing the notice on the Notice Board of the company, calling upon the workers to join the employment, the management had also published notice in newspapers calling upon the workmen to join duty failing which their services will stand terminated. Despite the public notice the petitioner did not come forward to join the duty and therefore his services stood terminated.

5. The Labour Court, on consideration of evidence before it, has rejected the contention of the petitioner that he continuously reported for work and that no work was given to him by the opponent and that the management failed to provide him work. The Industrial Court has also recorded the same finding. This is

a finding of fact and in a writ jurisdiction it is not open for this court to examine the correctness of this finding of fact in the absence of perversity.

6. Learned counsel for the petitioner submitted that mere abandonment of service could not be regarded as termination of employment and the management must give intimation of the termination and follow the principles of natural justice. In Babasaheb Devgonda Patil vs. Sri Panchgonda Sahakari and ors., reported in 1988 (1) LLN p. 773 a Division Bench of this court held that where the employee had abandoned the service for about 3 years and where his name was stuck off with intimation to him it could be held that the employee had abandoned the service and would not be entitled to any relief. In the present case, the petitioner abandoned the service for nearly 15 years and had not joined the service despite intimation by publication of notice on the notice board and in the newspapers. In the circumstances it cannot be held that the employee continues to be in service.

7. There is one more reason why, in my view, the petitioner is not entitled to any relief. As per the provisions of the Textile Undertakings (Nationalisation) Act 1955 the entire undertaking of Gold Mohur Mills stood vested in National Textile Corporation Limited (NTC), a company incorporated and registered under the Companies Act 1956. The under section 14 of the Act the services of all employees who were in the employment of the old

mill on the appointed date (1st April 1994) stood transferred to NTC Limited. If the contention of the petitioner that he continued in the employment of the respondent is accepted then his services would stand transferred with effect from 1st April 1994 to NTC Ltd. In the circumstances NTC., a body corporate, would be a necessary party. The petitioner had joined only two parties viz., (1) M/s. Gold Mohur Mills and 2) the Manager, M/s. Gold Mohur Mills as parties to his complaint before the Labour Court. NTC Limited was not joined as party to the complaint, though in the appeal the title was changed to M/s. Gold Mohur Mills (UC) NTC Ltd. This could not have been done without joining NTC Ltd., as party to the complaint. The complaint was therefore liable to be dismissed on this ground also. There is no merit in the petition. The petition is rejected summarily.

(D. G. KARNIK **J**)